Pitts (Staley)
Mark W Mackay -

269

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 65

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

NEW YORK & CUBA MAIL STEAMSHIP COMPANY

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1924
CERTIORARI GRANTED JUNE 9, 1924

Transfer Case 214/320/34
Constitutional Question

(30343)

does this apply to seamen when
on US ship in this country & in-
tended to return? Does the word
"aliens" mean Americans on for-
eign ships? No. Does it mean alien
on any (American) ship -

"Foreign" seaman refers
to vessel & would include Americans
on foreign ships -

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 392

THE UNITED STATES OF AMERICA, PETITIONER

vs.

NEW YORK & CUBA MAIL STEAMSHIP COMPANY

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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1 In United States District Court

Writ of error

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Judges of the District Court of the United States, for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea some of you, between United States of America, *plaintiff, and New York & Cuba Mail Steam-* plaintiff, and New York & Cuba Mail Steamship Company, defendant, a manifest error hath happened, to the great damage of the said New York & Cuba Mail Steamship Company, as is said and appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States Circuit Court of Appeals for the Second Circuit, at the city of New York, together with this writ, so that you have the same at the said place,

2 before the judges aforesaid, on the 29th day of September, 1923, that the record and proceedings aforesaid being inspected, the said judges of the United States Circuit Court of Appeals for the Second Circuit may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable William Howard Taft, Chief Justice of the United States, this 30th day of August, in the year of our Lord one thousand nine hundred twenty-three, and of the independence of the United States the one hundred forty-eighth.

L. S.
[SEAL.]

ALEX. GILCHRIST, JR.,
Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
August 30, 1923.

WM. BONDY,
United States District Judge.

3 In United States District Court for the Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF
against
NEW YORK & CUBA MAIL STEAMSHIP COMPANY, DEFENDANT

L. 29
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Summons

To the ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Hon. Learned Hand, judge of the District Court of the United States for the Southern District of New York, at
4 the city of New York, this 12th day of May, in the year one thousand nine hundred and twenty-two.

ALEX. GILCHRIST, JR., *Clerk.*

WM. HAYWARD,
United States Attorney, Plaintiff's Attorney,
Office and Post Office Address,
U. S. Courts & P. O. Building,
Borough of Manhattan, City of New York.

To the DEFENDANT WITHIN NAMED:

Take notice, that upon default judgment will be taken for the sum of dollars, in money, with interest from the day of , 19 , besides costs.

WILLIAM HAYWARD,
United States Attorney, Plaintiff's Attorney,
U. S. Court and P. O. Building,
New York City (Borough of Manhattan).

5 In United States District Court

[Title omitted.]

Complaint

The plaintiff by William Hayward, U. S. attorney for the Southern District of New York, its attorney, for its complaint herein alleges upon information and belief:

First. That at all the times hereinafter mentioned the plaintiff was and now is a corporation sovereign.

Second. That at all the times hereinafter mentioned the defendant was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Maine.

Third. That at all the times hereinafter mentioned the defendant was the owner of the S. S. "Yucatan," a merchant vessel engaged in the common carriage of freight and duly registered in the United States.

6 Fourth. That on or about the 18th day of July, 1921, the said S. S. "Yucatan" arrived at the port of New York, a sea port of the United States, having on board, among others, one Victor or Vickar Moreno, a citizen of the Republic of Chile, a member of the crew of the said S. S. "Yucatan," who had signed regular shipping articles thereon at the port of New York for a voyage to Cuba, the West Indies, Gulf of Mexico, and return.

Fifth. That said Victor or Vickar Moreno was found on arrival in the port of New York as aforesaid to be afflicted with one of the diseases mentioned in section 35 of the act of February 5, 1917, entitled "An act to regulate the immigration of aliens to, and the residence of aliens in, the United States," to wit, venereal disease.

Sixth. That thereupon and on or about February 26, 1921, the commissioner of immigration at the port aforesaid duly notified in writing one O. E. Seastrom, who was then and there an officer or agent of the said steamship, to deliver said Victor or Vickar Moreno at the U. S. immigration station, Ellis Island, port of New York, being the place designated therefor by the immigration officer at that port.

Seventh. That thereupon and on or about the date aforesaid the said Victor or Vickar Moreno was delivered to the said immigration station, Ellis Island, port of New York, and was then and

7 there placed in a hospital designated by the immigration officer in charge of the said port of New York, to wit, the U. S. Public Health Service hospital at Ellis Island.

Eighth. That thereupon the said Victor or Vickar Moreno was treated for his said disease as aforesaid by the physicians in charge at the said U. S. Public Health Service hospital from on or about the 19th day of July, 1921, to on or about the 25th day of August, 1921, when he was discharged therefrom as cured and duly admitted to the United States.

Ninth. That thereafter and on or about the 16th day of November, 1921, the commissioner of immigration at the port aforesaid duly demanded the payment by the defendant of the sum of $83.25, being the expenses connected with the maintenance and treatment of said Victor or Vickar Moreno as aforesaid, but that the defendant has refused and failed to pay the same in violation of the statute of the United States in such case made and provided, to wit, an act approved December 26, 1920, entitled "An act to provide for the treatment in hospital of diseased alien seamen, which at all the times herein mentioned was in full force and effect.

Tenth. That by reason thereof and of the premises the defendant became and is now indebted to the plaintiff in the sum of $83.25, no part of which has been paid (although duly demanded.

8 Wherefore plaintiff demands judgment against the defendant in the sum of $83.25, together with cost and disbursements of this action.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Plaintiff.
Office & P. O. Address, U. S. Courts & P. O. Bldg.,
Borough of Manhattan, City of New York.

9 [Jurat showing the foregoing was duly sworn to by John Holley Clark, jr., omitted in printing.]

10 In United States District Court

[Title omitted.]

Notice of motion to dismiss complaint

Please to take notice that the undersigned will move this court, at a stated term for the hearing of motions, to be held at the Post Office Building, borough of Manhattan, on June 16th, 1922 at 10 a. m. or as soon thereafter as counsel can be heard, for judgment dismissing the complaint herein on the ground that it appears upon the face thereof:

That the complaint does not state facts sufficient to constitute a cause of action.

Dated N. Y., June 2nd, 1922.

Yours &c.,

JAMES A. HATCH,
Attorney for Defendant,
Office & P. O. Address # 49 Wall Street,
Borough of Manhattan, New York City.

To HON. WILLIAM HAYWARD,
U. S. Attorney,
Attorney for Plaintiff,
Post Office Building, New York City.

11 In United States District Court

[Title omitted.]

Judgment, May 12, 1923

The issues of law in this action raised by the motion to dismiss the complaint of the plaintiff herein, having been brought on for hearing before Hon. John C. Knox, one of the judges of this court, at a stated term thereof held on the 13th day of July, 1922, at the Post Office Building, borough of Manhattan, city of New York, and the court having on the 26th day of August, 1922, entered an order overruling the said motion to dismiss the complaint herein, with

leave to the plaintiff to enter final judgment against the defendant for $83.25 and costs unless the defendant should answer the complaint within twenty days after service of said order; and the defendant having failed to serve an answer to the said complaint within twenty days after service of said order; and the costs of the plaintiff having been taxed at sixteen and $\frac{2}{100}$($16.02) dollars:

12 Now, on motion of William Hayward, United States attorney for the Southern District of New York, attorney for the plaintiff herein, it is

Adjudged that the plaintiff, United States of America, have judgment against the defendant, New York & Cuba Mail Steamship Company, upon the issues in this action, and recover of the defendant the sum of $83.25, and $16.02 as costs making in all the sum of ninety-nine and $\frac{27}{100}$ ($99.27) dollars and have execution therefor.

ALEX. GILCHRIST, Jr.

13 United States District Court

[Title omitted.]

Opinion

William Hayward, United States attorney, attorney for plaintiff, in opposition (John Holley Clark, jr., asst. United States attorney, and Morris Streusand, special assistant United States attorney, of counsel).

James A. Hatch, attorney for defendant, for motion (Rumsey & Morgan, of counsel).

John Tilney Carpenter, advocate.

KNOX, D. J.:

Moreno, a Chilean, was employed on board the American steamship "Yucatan," of which defendant is the owner. Moreno signed on board the "Yucatan" at New York for a voyage to Cuba, West Indies, the Gulf of Mexico and return. He arrived here upon

14 his return trip on July 18, 1921. Upon being examined by immigration boarding officers, Moreno was found to be afflicted with a venereal disease. He was taken to Ellis Island, placed in the Public Health Service hospital and received treatment. Subsequently the immigration authorities presented a bill to defendant in the sum of $83.25 for the expenses involved in the services rendered Moreno. Defendant denied its liability, and hence this suit predicated upon the provision of the act of December 26, 1920, entitled, "An act to provide for the treatment in hospital of diseased alien seamen."

To the Government's complaint defendant interposed a demurrer, and thus presents the question of the liability of an American shipowner to pay the medical or hospital expenses of seamen of foreign nationality, employed on American ships, who are suffering from venereal disease, when such expense is incurred at the instance of the immigration officials in charge at the port of arrival.

The basis of defendant's contention is that seamen partake of the nationality of the ship upon which they serve, and hence, seamen upon American ships are not alien seamen within the meaning of the act of Congress, above referred to. It is, however, admitted that if the act of December 26, 1920 is to be considered a part of our general immigration laws, the demurrer is not well founded.

The law claimed to be applicable to the state of facts here present has been elaborately briefed, the principle invoked being
15 deemed of great importance to American shipowners, and this litigation denominated by defendant as a "test case." Nevertheless, this is not the first occasion upon which the statute has come before the Courts. Upon at least two occasions, viz, France et al. vs. Seas Shipping Corporation, Inc., 272 Fed. 542, and Castner, Curran and Bullitt, Inc., v. Hamilton, Collector of Customs, 275 Fed. 203, it has been construed adversely to the contention of defendant. In the latter of these cases, Judge Groner held that "the object and purpose of Congress in passing the act of 1920 was not * * * to enact a seamen's benefit statute, but to supply an omission in the existing immigration law (act February 5, 1917), and to make certain of "the provisions of that law applicable to cargo vessels as well as to passenger ships; the particular provisions being those contained in section 35 regarding the detention and treatment at the expense of the vessel of diseased alien members of a crew of any vessels carrying passengers between a port of the United States and any foreign port, to prevent the spread of loathsome and contagious diseases, and to place all aliens, whether found on American or foreign vessels, freight as well as passenger, under the jurisdiction of the immigration officials, because the public safety required it."

The court then proceeded to state its reasons for so construing the act, and they are sufficiently persuasive to lead me to adopt them for my own.

It is only fair to defendant to say that when the bill was
16 being discussed in the House, there was some expression by the Representative in charge to the effect that the act was not meant to apply to alien seamen on board American ships; for example, this colloquy ensued:

"Mr. HICKS. Does the gentleman think that this bill will supersede the La Follette Act in regard to certain provisions?

"Mr. JOHNSON. No; this takes care of the health provision and turns over to the owners of the ships the care of those men who come in. If we care for the sailor who is sick, the owners of the ship will be responsible. That provision is partly in the immigration law now. This perfects it.

"Mr. FOCHT. Does that include both foreign ships and American ships?

"Mr. JOHNSON. American ships take care of their sick seamen.

"Mr. FOCHT. But under the provisions of this bill both will be included?

"Mr. JOHNSON. No; this bill refers to alien seamen."

These statements are of course susceptible of the construction that defendant wishes adopted, but if, as Mr. Johnson previously said, this legislation was intended to "perfect" section 35 of the existing immigration law, I see no alternative than to hold with the Government. That such was the intention I have no doubt.

The demurrer will be overruled, and unless the defendant answers within twenty days the United States may have the judgment it seeks.

New York, August 3, 1922.

JNO. C. KNOX, *U. S. D. J.*

17 United States District Court

[Title omitted.]

Petition for and order allowing writ of error

New York & Cuba Mail Steamship Company, the defendant above named, feeling itself aggrieved by the judgment herein in favor of the plaintiff, entered and filed in this cause in the office of the clerk of the United States District Court for the Southern District of New York on the 12th day of May, 1923, in favor of the plaintiff, United States of America, and against the defendant, New York & Cuba Mail Steamship Company, for the sum of $99.27:

Now comes, by James A. Hatch, its attorney, and prays for a reversal of said judgment, and to that end to transmit a writ of error to the United States Circuit Court of Appeals for the
18 Second Circuit, according to the laws of the United States in such case made and provided.

And your petitioner will ever pray.

NEW YORK & CUBA MAIL
STEAMSHIP COMPANY,
Petitioner.

By JAMES A. HATCH,
Attorney for Petitioner.

RUMSEY & MORGAN, *of Counsel.*
Office and Post Office Address, 20 Exchange Place,
Borough of Manhattan, City of New York, N. Y.

The foregoing claim of writ of error is allowed.

New York, Aug. 30, 1923.

WM. BONDY, *District Judge.*

19 United States District Court

[Title omitted.]

Assignment of errors

The defendant above named, by James A. Hatch, its attorney, assigns error in the judgment in this case because the learned trial judge erred:

1. In denying defendant's motion to dismiss the complaint on the ground that it does not state facts sufficient to constitute a cause of action.

2. In ruling that the provisions of the act of Congress approved December 26, 1920, entitled "An act to provide for the treatment in hospital of diseased alien seamen," are in effect an amendment of section 35 of an act of Congress approved February 5, 1917, entitled "An act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

20 3. In ruling that the provisions of the act of Congress approved December 26, 1920, entitled "An act to provide for treatment in hospital of diseased alien seamen," apply to seamen of foreign nationality employed on vessels registered in the United States.

4. In refusing to rule that the provisions of the act of Congress approved December 26, 1920, entitled "An act to provide for the treatment in hospital of diseased alien seamen," are in violation of the fifth amendment of the Constitution of the United States, and void.

5. In granting plaintiff final judgment against the defendant for the relief demanded in the complaint, with costs as taxed.

Wherefore defendant prays that the judgment of the said District Court of the United States for the Southern District of New York be reversed, etc.

Dated, New York, August 30th, 1923.

JAMES A. HATCH,
Attorney for Defendant.

RUMSEY & MORGAN, *of Counsel.*
Office and Post Office Address, 20 Exchange Place, Borough of Manhattan, City of New York, N. Y.

21–22 [Citation in usual form omitted in printing.]

23 In United States District Court

[Title omitted.]

Stipulation, retranscript of record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said district court in the above-entitled matter as agreed upon by the parties.

Dated, New York, November , 1923.

JAMES A. HATCH,
Attorney for Plaintiff in Error.
RUMSEY & MORGAN, *of Counsel.*
WILLIAM HAYWARD,
United States Attorney,
Attorney for Defendant in Error.

24 In United States District Court

[Title omitted.]

Clerk's certificate

I, Alex. Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said district court in the above-entitled matter as agreed on by the parties.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this day of November, in the year of our Lord one thousand nine hundred twenty-three and of the independence of the said United States the one hundred forty-eighth.

[SEAL.] ALEX. GILCHRIST, JR., *Clerk*.

25 In United States Circuit Court of Appeals for the Second Circuit

No. 231, October term, 1923

Argued February 7, 1924; decided February 18, 1924.

NEW YORK & CUBA MAIL STEAMSHIP COMPANY, plaintiff in error
v.
UNITED STATES, DEFENDANT IN ERROR

In error to the District Court of the United States for the Southern District of New York.

Before HOUGH, MANTON, and MAYER, Circuit Judges

Opinion

Writ of error to the United States District Court for the Southern District of New York. Action by the United States of America against the New York & Cuba Mail Steamship Company, defendant, to recover damages for the maintenance and medical expenses of a seaman under an act of Congress. Judgment for plaintiff; defendants appeals. Reversed.

Mark W. Maclay, Esq., counsel for plaintiff in error.

William Hayward, Esq., United States attorney, for defendant in error.

Morris Streusand, Esq., of counsel.

26 MANTON, *Circuit Judge:*

This action is brought to recover the expense of maintaining and treating a seaman of the S. S. "Yucatan," which was registered as a United States merchant vessel and was engaged in carrying a general cargo. It is based on the act of December 26, 1920, known as "An act to provide for the treatment in the hospital of diseased alien seamen." (41 Stat. 1082.) The seaman was a citizen of Chile and signed articles for a voyage from New York to Cuba, West Indies, Gulf of Mexico and return. The vessel returned on

July 18, 1921, at which time the seaman, on order of the Commissioner of Immigration, was delivered to Ellis Island because he was found to be infected with a venereal disease. He was treated at Ellis Island until August 25, 1921, and discharged as cured. The writ of error sued out seeks to review a judgment entered after a motion denying an application to dismiss the complaint. The facts are undisputed. The act in question provides:

"An act to provide for the treatment in hospital of diseased alien seamen:

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That alien seamen found on arrival in ports of the United States to be afflicted with any of the disabilities or diseases mentioned in section 35 of the act of February 5, 1917, entitled, 'An act to regulate the immigration of aliens to, and the residence of aliens in, the United States,' shall be placed in a hospital designated by the immigration official in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, or master of the vessel, and not to be
27 deducted from the seaman's wages, and no such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed and the collector of customs so notified by the immigration official in charge: Provided, That alien seamen suspected of being afflicted with any such disability or disease may be removed from the vessel on which they arrive to an immigration station or other appropriate place for such observation as will enable the examining surgeons definitely to determine whether or not they are so afflicted, all expenses connected therewith to be borne in the manner hereinbefore prescribed: Provided further, That in cases in which it shall appear to the satisfaction of the immigration official in charge that it will not be possible within a reasonable time to effect a cure, the return of the alien seamen shall be enforced on or at the expense of the vessel on which they came, upon such conditions as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall prescribe, to insure that the aliens shall be properly cared for and protected, and that the spread of contagion shall be guarded against."

The claim of the plaintiff in error is that the enforced obligation of the statute is not applicable to seamen of a ship of the United States registry even though the seaman in the service of such ship may have been born in or was a citizen of another nation. Its argument is that "alien seamen" as used in the act applies to seamen on foreign vessels only because of the settled maritime law that seamen partake of the nationality of the vessel on which they serve. We think the statute should be read and applied in accordance with the settled maritime law. That seamen of a vessel are regarded as of the nationality of the ship is now well established. In In re Ross (140 U. S. 453) the rule is stated that the vessel being American

is evidence that the seamen on board are. In that case the court said:

28 "This rule, that the vessel being American is evidence that the seamen on board are such, is now an established doctrine of this country; and in support of it there is with the American people no diversity of opinion and can be no division of action.

"We are satisfied that the true rule of construction in the present case was adopted by the Department of State in the correspondence with the English Government, and that the action of the consular tribunal in taking jurisdiction of the prisoner Ross, though an English subject, for the offence committed, was authorized. While he was an enlisted seaman on the American vessel, which floated the American flag, he was, within the meaning of the statute and the treaty, an American, under the protection and subject to the laws of the United States equally with the seaman who was native born."

In Matthews v. Offley (1837 Fed. Cas. No. 9290) in a suit to enforce a penalty against a master for failing to comply with the orders of the consul in respect of a British subject who died while on a merchant vessel of the United States, under §§4577–4578 of the Revised Statutes (chap. 62), a finding as to whether the seaman came within the provisions of the act of 1803 was necessary. Justice Story held that foreigners while employed as seamen on merchant vessels of the United States "are mariners and seamen of the United States within the language and policy of the act of 1803." This principle has been followed by the Department of State in administrating statutory provisions relating to seamen through the consular service. (The Digest of Consular Regulations, p. 17.) Consular Regulation No. 199 defines American seamen for the purposes of the administration of the laws relating to discharge, wages, and extra wages of seamen, and refers as such to foreigners regularly

29 shipped on American vessels from ports of the United States. More recent cases have held to the same effect. ("The Laura M. Lunt," 170 Fed. 204; "The Blakeley," 234 Fed. 959.) An American citizen while employed as a seaman on a foreign ship is regarded as a seaman of that ship's nationality and he is denied the benefits and released from the obligations of a citizen of the United States while so employed. (Rainey v. N. Y. & P. S. S. Co., 216 Fed. 449.) And an American citizen who shipped on a Norwegian vessel at an American port was held to be, for the time so employed, entitled only to the rights granted by the laws of Norway, and his claim for damages fell within the exclusive jurisdiction of the Norwegian consul in accordance with the terms of a treaty between the United States and Norway. ("The Marie," 49 Fed. 286.)

The statute should be given no broader construction than its language and clear intent require. (Steam Engine Co. v. Hubbard, 101 U. S. 188; Chase v. Curtis, 113 U. S. 452.) The phrase used in the statute is "alien seamen." It is not aliens employed on board any vessel arriving in the United States or seamen who are aliens. In the absence of plain language making the statute ap-

plicable to a foreign seaman employed on a United States vessel, it is clear that it was not intended by Congress to depart from the settled understanding of alien or foreign seamen as understood in the maritime law. Congress can legislate to impose liability on foreign and United States ship owners; although if applicable to United States vessels the instant legislation here imposed an obligation of doubtful constitutionality. Legislation of this character has universally exempted the employer from liability resulting from wilful misconduct on the part of the employe. (Missouri Pacific Ry. Co. v. Castle, 224 U. S. 541; N. Y. Central R. Co. v. White, 243 U. S. 188; Hawkins v. Bleakly, 243 U. S. 210; Mountain
30 Timber Co. v. State of Washington, 243 U. S. 219; Arizona Employers' Liability Cases, 250 U. S. 400.)

It will be observed that in cases in which it shall appear to the satisfaction of the immigration official in charge that it will not be possible, within a reasonable time, to effect a cure, the return of the alien seaman is enforced on or at the expense of the vessel on which he came. And this statute presents the question—returned where? (Castner, Curran & Bullitt v. Hamilton, 275 Fed. 203.) In the case at bar, the seaman signed on this United States vessel for a voyage to Cuba and return to New York. If he could not have been cured within a reasonable time under the construction which is contended for by a defendant in error, the plaintiff in error's obligation would have been to return him to the port of departure—where the ship first received him on board—which would be an absurdity because he was already there when confined with his sickness. It would not be expected that the ship owner should be required to return a sick or diseased seaman to the country from which he originally came, and the provision must mean return to the port from which he came or shipped. This would have little meaning as applied to an alien sailor shipping on a United States vessel at a United States port, because the obligation would be to return him to the place where he is objectionable. It would be unreasonable to require the vessel which brought such a seaman to a United States port to take him back to some port of the nation of which he is a citizen. Such provision might twell apply to a foreign vessel. We cannot hold that Congress intended that a United States ship owner, engaged in foreign trade, be required to return a diseased alien to a foreign country from which he originally came, and it is less likely that it was intended to require this of a United States vessel engaged in coastwise service. If we regard the statute as meaning an alien seaman employed on a United States vessel as entitled to this
31 benefit, it would cast a burden of an absurd character without reason therefor. That Congress had no such intention finds some support in the debates in Congress.* Where a report of

* "Mr. JOHNSON of Washington. Mr. Speaker, this bill was passed by the House on July 30, 1919. It is a necessary measure, in my opinion, growing out of certain conditions in the Department of Labor connected with the examination of sick sailors, in order that part of the expense of their maintenance

a committee is supplemented by the spokesman of the House committee who has had the bill in charge when it was under consideration by the House, it is regarded as an expression of the legislative intent in a case where the meaning of the statute may be obscure.

32 (Duplex Printing Press Co. v. Deering, 254 U. S. 443; Binns v. United States, 194 U. S. 486; United States v. St. Paul, Minn. & Manitoba Ry. Co., 247 U. S. 310.)

The act may not be considered as part of the general immigration law. (Franco v. Seas Shipping Corp., 272 Fed. 542.) Seamen are not immigrants, and the immigration laws do not apply to seamen in the absence of express provisions to that effect. (Scharrenberg v. Dollar S. S. Co., 245 U. S. 122; Taylor v. United States, 207 U. S. 120.) Congress did not declare either in the title or the text of the act of February 26, 1920, that the statute was an immigration measure. In passing what Congress intended as immigration measures in other instances it has defined the character of the legislation as such in the title. Indeed, we think the act differs from the immigration act in respect of persons described and the conditions of liability imposed. We conclude that the statute in question has no application to citizens of other countries while employed on United States ships and is intended to apply only to seamen of foreign ships.

Decree reversed.

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shall be borne by the owners of foreign ships coming to these ports bringing the sailors.

"Mr. HICKS. Mr. Speaker, will the gentleman yield?

"The SPEAKER pro tempore. Does the gentleman from Washington yield to the gentleman from New York?

"Mr. JOHNSON of Washington. Yes: but I thought I would make a brief statement first.

"Mr. HICKS. I would be glad if the gentleman would make that statement, because I am free to confess that I do not know what is the purpose of this bill, and what these amendments do.

"Mr. JOHNSON of Washington. I will try to explain them. Let me read the bill. * * *

"(The bill was then read, p. 621.)

"Mr. HICKS. Does this provide that the expense shall be borne as it is now? Does the bill put the expense on the ship owner instead of on the Marine Hospital Service?

"Mr. JOHNSON of Washington. This provides that the sick alien seaman shall remain in the charge of the immigration officials and not permitted to step out if they are sick, and if incurable must go back in the vessel on which they shipped.

"Mr. HICKS. In other words, they are maintained at the expense of the ship owner until they are given a clean bill of health and discharged?

"Mr. JOHNSON of Washington. Yes; discharged from the hospital. That is the whole purpose of the bill. It will result in a saving of money and will put the sick sailor in charge of the Public Health officials.

* * * * * * * *

"Mr. FOCHT. Does that include both foreign ships and American ships?

"Mr. JOHNSON of Washington. American ships take care of their sick seamen.

"Mr. FOCHT. But under the provisions of this bill both will be included?

"Mr. JOHNSON of Washington. No; this bill refers to alien seamen.

* * * * * * * *

"Mr. JOHNSON of Washington. * * * This is a bill made necessary after an attempt to carry out these things, in order to save the United States anywhere from $200,000 annually, on up, according to the number of sick sailors from alien ships. That is all there is to it" (p. 622).

33–34 In United States Circuit Court of Appeals

[Title omitted.]

Judgment, February 25, 1924

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed.

C. M. H.
M. T. M.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

35 In United States Circuit Court of Appeals

Clerk's certificate

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 34, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of New York & Cuba Mail Steamship Company, plaintiff in error, against United States, defendant in error as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 7th day of May, in the year of our Lord one thousand nine hundred and twenty-four, and of the independence of the said United States the one hundred and forty-eighth.

[SEAL.] WM. PARKIN, *Clerk.*

36 Supreme Court of the United States

Order granting petition for certiorari, June 9, 1924

On petition for writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the Second Circuit, and of the argument of counsel thereupon had:

It is now here ordered by this court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

In the Supreme Court of the United States

OCTOBER TERM, 1923

THE UNITED STATES, PETITIONER,
v.
NEW YORK AND CUBA MAIL STEAMSHIP Company } No. ——

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF

Comes now the Solicitor General of the United States, and prays the Court to issue a writ of certiorari to review the judgment rendered by the United States Circuit Court of Appeals for the Second Circuit in the above-entitled cause.

THE FACTS

Acting pursuant to the provisions of the Act of December 26, 1920 (41 Stat. 1082), hereinafter set forth in full, the immigration officers accorded medical treatment to an alien seaman found aboard an American vessel of respondent upon its arrival at the Port of New York. A bill in the sum of $83.25, covering the expense of such medical treatment, was

submitted in due course to respondent, and payment refused. Suit was instituted and judgment recovered. (R. p. 37.) On appeal, this judgment was reversed by the United States Circuit Court of Appeals on the ground that the Act covered only foreign vessels.

II

REASONS FOR ISSUANCE OF THE WRIT

That this case deserves review by this court, is strongly demonstrated by the following reasons:

1. The statute out of which this cause arises, clearly manifests a purpose on the part of Congress to compel all shipowners to bear the expense of medical treatment of alien seamen like the one here involved.

2. The Department of Labor has always adhered to this construction of the statute.

3. The aggregate annual expense involved in the medical treatment of alien seamen is considerable, and should not be made a burden upon the public revenues, unless this court expresses the view that the statute here in issue intends that result.

4. The judgment of the Circuit Court of Appeals in this case is at variance with that of the trial court, and with that of other United States District Courts which have been called upon to construe and apply the statute here in question. See cases cited in opinion of trial court (R. p. 13).

III

THE STATUTE DRAWN IN QUESTION

The Act of December 26, 1920 (41 Stat. 1082), reads as follows:

> An Act to Provide for the Treatment in Hospital of Diseased Alien Seamen.
>
> Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that alien seamen found on arrival in ports of the United States to be afflicted with any of the disabilities or diseases mentioned in section 35 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States," shall be placed in a hospital designated by the immigration official in charge at the port of arrival and treated, all expenses connected therewith, including burial in the event of death, to be borne by the owner, agent, consignee, or master of the vessel, and not to be deducted from the seamen's wages, and no such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed and the collector of customs so notified by the immigration official in charge: *Provided*, That alien seamen suspected of being afflicted with any such disability or disease may be removed from the vessel on which they arrive to an Immigration station or other appropriate place for such observation as will enable the examining surgeons definitely to determine whether or not they are so afflicted, all expenses connected

therewith to be borne in the manner hereinbefore prescribed:

Provided further, That in cases in which it shall appear to the satisfaction of the immigration official in charge that it will not be possible within a reasonable time to effect a cure, the return of the alien seamen shall be enforced on or at the expense of the vessel on which they came, upon such conditions as the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall prescribe, to insure that the aliens shall be properly cared for and protected, and that the spread of contagion shall be guarded against.

IV

ARGUMENT

The errors in the holding of the Circuit Court of Appeals may be thus summarized:

1. The statute here drawn in question is not to be interpreted according to what is referred to by the Court of Appeals as the general maritime rule, for the statute upon its face exhibits an intent to make it companion to the immigration laws, and as broad in its scope as Section 35 of the Immigration Act of February 5, 1917, to which it conspicuously refers. Its legislative history, as pointed out in the closing part of the trial court's opinion, confirms this view. The debates while the bill was under discussion on the floor of the House of Representatives, and upon which the Circuit Court of Appeals so strongly relies in reaching its conclusion, seem to be capable of being

utilized as cogently for the interpretation claimed by the Government as against it.

2. The fact that the statute provides, among other things, for the return of incurable alien seamen, and no return of the seaman here involved could be made because he was originally signed on at an American port, does not, as contended, show a clear reason for restricting the Act to foreign vessels. In the first place, no return of the seaman was sought in the case at bar; and secondly, the alleged doctrine that the nonapplication of certain provisions of a law to a person or entity thereby takes such person or entity entirely out of the statute was held to be without merit in *United States* v. *Union Supply Company*, 215 U. S. 50, 54, 55. Moreover, the same difficulty of return of the seaman would be encountered if the statute should be restricted to foreign vessels. It is to be observed, however, that the statute authorizes the return not only on the vessel which brought the seaman here, but "at the expense of the vessel." This latter provision would take care of the contingency here dealt with.

It is respectfully submitted that the writ should issue.

JAMES M. BECK,
Solicitor General.
EARL J. DAVIS,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

MAY, 1924.

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